IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1225 of 2005

With

CRIMINAL APPEAL NO. 1301 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BAMARLAL BHAGWANJI AADGAUR (VYAS) - Appellants
Versus
STATE OF GUJARAT - Respondents

==========

Appearance :

MS NISHA M PARIKH for Appellant in CR.A. No. 1225 of 2005

Mr. M.J. Buddhbhatti for Appellant in CR.A. No. 1301 of 2005
MR. I.M. PANDYA, LD. APP for Respondent State in both the appeals.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 09/11/2006

ORAL JUDGMENT

1. This matter was argued at length and was kept today for clarification to be made by Ms. Parikh and for dictation of judgment. Today, Ms. Parikh who appeared for the appellant in Criminal Appeal No. 1225 of 2005 has stated at the Bar that, she can not now appear on behalf of the appellant as she has been appointed as Assistant Government Pleader from 6/11/2006. As it is stated herein above, this matter has been heard at length and today it was kept for dictation and, therefore, only on this count now there is no need to appoint any new counsel for the appellant in Criminal Appeal No. 1225 of 2005. Today this matter was kept only for dictating the judgment. Ms. Parikh had argued the matter at length and her arguments were over. In view of this, the anxiety of Ms. Parikh would be taken care of as the arguments on part of the respondent State was also over and therefore it can not be said that her appearance would be in any way in conflict with the stand of the State. The clarification aspect on some points now need not be advanced by her. The clarification is forthcoming from the record with regard to the possession of the article, and therefore, now only on this point there is no need to adjourn the matter. Hence the judgment is dictated today.

2. The Criminal Appeal No. 1225 of 2005 is

preferred by the appellant – original accused No.1 in Special NDPS Case No. 3 of 2002 and Criminal Appeal No. 1301 of 2005 is preferred by the appellant – original accused no.2 in Special NDPS Case No. 3 of 2002, challenging the judgment & order of conviction dated 17/3/2005 passed by learned Addl. Sessions Judge & Fast Track Court, Nadiad, convicting both the appellants for commission of offence under Section 18 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (herein after referred to "NDPS Act"), and sentenced them to undergo R.I. for a period of 5 years and payment of Rs.50,000=00; and in default of fine, both the accused have been ordered to undergo is also granted.

3. Criminal Appeal No. 1301 of 2005 was admitted by this Court (Coram: J.R. Vora, J) on 16/8/2005, while Criminal Appeal No. 1228 of 2005 was admitted by this Court (Coram: S.R. Brahmbhatt, J) on 22/6/2006, keeping the age of accused no.1 of 80 years and the period of short sentence in mind it was fixed for final hearing in the week commencing from 10/7/2006.

4. As both the appeals are arising out of the common judgment & order dated 17/3/2005 in Criminal Case No. 3 of 2002 they have been proposed to be disposed of together by this common judgment.

5. Fact in short giving rise to the appeals deserve

to be narrated as under :-

5.1On 10/6/2002 when the complainant was discharging his duty as Police Sub Inspector (LCB) Kheda, he along with Police Inspector Shri. P.U. Raolji and Head Constable named in the complaint had gone on patrolling duty. From Kheda when they reached at the place called Alina the complainant received information from secret source that between village Mahuwa and Vatvatiya huge consignment of illicit liquor was likely to be transported. This information was received by him at Alina bus stop. On receiving such information two panch witnesses were called and they were explained about the procedure for nabbing persons indulging into commission of offence under the Prohibition Act. Along with the panch the patrolling party proceeded towards village Mahuda in their government vehicle. The party stopped at the culvert at Raskaviyer canal in waiting for the consignment of illicit liquor which was stated to take place as per the secret information. They spotted two persons coming on the way from Vatvatiya village. They were accused no.1 and 2. On accosting them they got frightened and tried to change their way. On inquiring from them the accused no.1 informed that he was carrying in his sling bag opium. After introducing themselves, the complainant and his companions (members of the raiding party) informed the accused that as their “persons”

were required to be searched whether they would like to be searched in presence of either Mamlatdar or Class-I officer. Both the accused declined to be searched in presence of either Mamlatdar or Class-I officer. The search resulted in to recovery of opium of about 270 grams from accused no.1 and 2oo grams from accused no.2. An amount of Rs.10,600=00 also came to be recovered from the person of the accused No.1. As the opium was recovered the expert from FSL was required to be called for certifying the same and it was also required to be weighed and therefore police constable was sent for fetching the expert and the person for weighing the substance. The FSL expert came from Kheda who opined the same to be opium after examining the substance and on weighing the substance it was noticed that accused no.1 had carried substance weighing 270 grams whereas substance recovered from accused no.2 was weighing 200 grams. 20 grams opium was collected from each of the two quantity of opium and it was placed in a polythene bag and covered it properly in presence of panch witness and it was sealed with the seal of Police Inspector (LCB) Kheda so that same can be send for further examination in FSL. The remaining quantity of opium was also packed in different bags so as to assign them proper identity as to which quantity recovered from whom and this bags were fastened with the seal of Inspector (LCB) Kheda. This procedure of collecting and

sealing was done in presence of panch. The panchnama was drawn at about 28 to 20.30 hours. The complaint was given by the complainant in presence of Police Inspector (LCB) for commission of offence under section 17 of the NDPS Act against the accused. The police party arrested the accused and handed over them along with muddamal in sealed condition to PSO, Mahuwa police station who recorded FIR being C.R. No: I-48/2002 for commission of offence under Section 17 of NDPS Act on 10/6/2002 at 20.30 hrs.

5.2 The investigation was carried out and the police charge sheet came to be filed on 21/8/2202. The charge was framed at exhibit-11 on 7/4/2003 against both the accused for commission of offence under Section 17 of the NDPS Act. The accused have denied the charge and claimed to be tried. The trial commenced. Prosecution has adduced oral and documentary evidence in support of the case. The accused were confronted with the case against them and their statements came to be recorded under Section 313 of Criminal Procedure Code, and accused denied the case against them. The trial court came to the conclusion that the prosecution has successfully established charges against both the accuse and therefore convicted them for commission of offence under Section 18 of the NDPS Act and sentenced them to undergo RI for a period of 5 years and payment of Rs.50,000=00; in default thereof

both of them are to undergo of S.I., for further period of one year.

5.3 Being aggrieved and dissatisfied with this judgment and order of conviction and sentence the accused no.1 and 2 have preferred Criminal Appeal No. 1225 of 2005 and 1301 of 2005 respectively.

6. Learned counsels for the appellants have submitted that the judgment & order of conviction impugned in the present appeals deserve to be quashed and set aside as the trial court has erred in appreciating the documentary as well as oral evidence on record. The counsels have submitted that the order impugned suffers from patent irregularity and infirmity and therefore same deserves to be quashed and set aside. The counsels have taken this Court through the deposition of witnesses and other documentary evidence in support of their contention that the contradictions enlisted in the deposition of witnesses and the material on record the trial court ought not to have passed order of conviction and sentence against the appellants. The counsels for the appellants have drawn this Court's attention to the effect that the trial court has passed the order of conviction and sentence based upon the testimony of police witnesses only. Both the independent panch witnesses No.2 and 3 have not supported the case of the prosecution. The counsels have

also submitted that another prosecution witness no. 4 who had been fetched for weighing muddamal article opium had also not supported the version of prosecution and therefore the order of conviction and sentence impugned in the present appeals deserve to be quashed and set aside. The counsels for the appellants have submitted that the appellants are advanced in age. The applicant / original accused no.1 was aged about 80 years when the trial was going on and appellant / original accused no.2 is also of advanced age of about 70 years t the time of trial and therefore, looking to their age and this being their alleged involved in the incident for the first time, some leniency should be shown in respect of awarding the sentence. This submission is of course by way of an alternative submission on the part of learned counsels.

7. Learned counsels have also submitted that there was non compliance with mandatory provision of Section 50 of the Act in as much as the deposition of complainant – P.W.-1 and P.W-4 the Inspector go to show that section 50 was not absolutely complied with. The sketchy communication to the accused informing them to be searched either in presence of Mamlatdar or in presence of Class -I officer can not be said to be adequate communication so as to make aware the accused about their right to have them searched either in presence of Magistrate or in

presence of a gazetted officer. The counsels for the appellants have also submitted that the deposition of PW-7, PW-8 and PW-9 would show that the muddamal article no.3 & 4 which were required to be sent to the FSL in a proper condition had not been sent in due compliance with provisions of law. The counsels have heavily stressed on the fact that concerned muddamal was recovered on 10/6/2002 and delivered to the FSL, Ahmedabad only at 11.00 O' clock on 13/6/2002. the time gap from the date of its collection and its delivery to the FSL needs to be properly explained and when there is a yawning gap in explaining the same the possibility of it being tampered can not be ruled out. In other words it can well be said that the prosecution to that extent has not established the guilt of the accused and therefore, benefit of doubt ought to have been accorded to the accused.

8. Learned counsels have also submitted that the judgment & order of conviction and sentence being erroneous on account of failure in noticing the glaring infirmities in the case of the prosecution, same deserves to be quashed and set aside.

9. Shri. Pandya, learned APP appearing on behalf of the Respondent State has submitted that the judgment & order of conviction & sentence deserve to be upheld. Shri. Pandya has submitted

that the testimony of the panch witnesses and weighing man go to clearly show that there was absolute compliance with all the mandatory provisions of the NDPS Act. The factum of recovery of contraband article namely opium from the person of the accused have been proved. The amount recovered from person of accused no.1 coupled with the fact that opium was found in large quantity than the small quantity as prescribed under the Act go to show they were dealing in trafficking of opium. This being serious offence they do not deserve lenient treatment from any quarter. Shri. Pandya has submitted that the time gap of 2 ½ days in sending the sample to FSL is explained properly by the prosecution. The testimony of prosecution witness no.2, No. 7, 8 and 9 clearly show that the muddamal was received in a sealed condition which was kept in the police station in a sealed condition and it was carried by the concerned person also in a sealed condition and delivered to FSL and certificate of FSL indicating that the FSL had received the muddamal in sealed condition rules out any possibility of the article being tampered with. In view of this it can well be said that the order of conviction and sentence deserve to be upheld.

10. Shri. Pandya, learned APP has further submitted that contradictions pointed out in the case of the prosecution can not be said to be so major and material, as to affect the very basis

of the case of the prosecution. The minor contradictions are always likely to be noticed due to time gap but on the basis of those contradictions the order of conviction and sentence can not be said to be vitiated. Shri. Pandya has further submitted that the fact remains that all the 3 independent witnesses namely panch witness no. 2 and 3 and prosecution witness no.4 have not supported the case of the prosecution but they were declared hostile and therefore their version needs to be viewed accordingly. Shri. Pandya has submitted that from the testimony of prosecution witness no.4 it can well be culled out that the raiding party was present at the place of incident. The accused were found to be sitting in a police van and the contraband goods was also present. Therefore, it can not be said that the prosecution case was not established. Shri. Pandya has submitted that the conviction in such a serious offence needs to be upheld even on the testimony of police witness as they have given absolutely impeccable evidence and were of sterling quality. In absence of any plea of animosity against any of the police witnesses it can not be said that police witnesses testimony deserve to be watered down on a spacious plea of they being interested parties. Shri. Pandya has submitted that, in view of the gravity of the offence the alternative plea of counsels of the appellants that the sentence be reduced also deserves to be rejected and the appeal itself be dismissed as having no merits.

11. This Court has heard learned counsels of respective parties at length and perused the documents accompanying the appeals and also the record & proceedings of Special NDPS Case No. 3 of 2002 received from the trial court.

12. The appellants / original accused no.1 and 2 had been charged for commission of offence under section 17 of the NDPS Act as they were found with opium on 10/6/2002 on the way near Vatvatiya/Muwada.

13. The prosecution has examined various witnesses for establishing their case against the accused. The brief discussion of the evidence led by the prosecution deserves to be set out in order to appreciate the rival contentions of respective counsel of the parties.

P.W. NO.1: The Police Sub Inspector (PW No.1) has been examined and his testimony is recorded at exhibit-16. This witness has stated that while discharging his duties as Police Sub Inspector Local Crime Branch (LCB) Kheda on 10/6/2002, he, along with Inspector P.U. Raolji, Head Constable Umedbhai Ramjibhai, Head Constable Yakubmiya, Police constable Popatbhai Prabhatbhai and Mafatbhai Holidaymaker etc had reached Alina via Mahudha This patrolling party had reached village Alina in a Government

vehicle. At Alina this witness received information that transfer of large consignment of illicit liquor was to take place at the boarder of village Marisa and Privatively. This information was received near the bus stand of village Alia. The Panchas were called from nearby place and they were explained that they were to act as panch witness in respect of watch to be arranged on information of transfer of illicit liquor. The Panchas had shown willingness to act as Pinchas. The entire patrolling party along with pans witnesses have started towards village Marisa. On the katchha road near culvert of Raskaviyer they had arranged the watch. Before arranging the watch the panchas and patrolling party each other had taken search of their person so as to ensure that no one was carrying any offending and or contraband articles. They saw two persons walking near the boarder of village Mahisa on the way of village Vatvatiya. One person was carrying sling bag on his shoulder and another person had put on waist sleeveless jacket and dothi. As their movement appears to be suspicious they were intercepted. Both the men feared and therefore they could not reply properly. On this police party introduced themselves as police and as the first man carrying sling bag had said that he was carrying opium. Both the men were informed that as their search was to be taken, whether they would like to have themselves searched in presence of Mamlatdar and or Class-I officer. Both these men

stated that they were not interested in facing such search in presence of either Mamlatdar or Class-I officer. On searching the accused No.1 i.e. Bamarlal Bhagwanji Aadgaur Vyas, from the sling bag, one dhoti and a polythene bag wrapped in the dhoti was found. The polythene bag contained soft black substance weighing about 200 grams. This substance on smelling appeared to be opium. On further searching of the said person, currency notes of Rs.10,600=00 from the fold of his dhoti tied on his waist were recovered. Another person who had put on sleeveless jacket and dhoti was also searched and from his front pocket of jacket 250 grams of black substance was found which also on smelling appeared to be opium. As the opium like substance was found it was required to be ascertained as to what was the exact substance. Police Constable Jabirhusain was sent for fetching FSL expert form Kheda and also some one with weighing scale for weighing material form village Mahisa. At about 19.30 hrs FLS expert from Kheda and the weighing person Gopalbhai Kantilal (P.W.No.4) came to the place. The FSL expert after carrying out the scientific examination of the stuff opium preliminary opined it to be opium. The witness No.4 weighed the substance and it was noticed that the accused no.1 was carrying 270 grams of opium and accused no.2 was carrying 200 grams of opium. The value thereof was taken to be Rs.9400=00. This witness has stated that after taking 20 grams of opium from each of the accused and

packing in the polythene bag which was also in turn placed into plastic cover, the slip containing signature of panch and Police Inspector were placed therein and the remaining quantity of opium was also packed and the requisite slips bearing signature of panch and Police Inspector (LCB) were placed in the same. The cloth bags were sealed and the seal of Police Inspector, LCB Kheda was affixed thereon. The panchnama was drawn from 18.00 to 20.30 hrs in the headlight of Government vehicle. Against both the accused this witness lodged complaint under provision of Section 17 of NDPS Act 1985 in presence of Police Inspector, LCB Kheda. The complaint was shown to the accused who identified his signature and stated that it was of same complaint and it came to be exhibited at exhibit-17. This witness also identified both the accused and said that they were the same persons who were present on the date and place of offence. This witness has stated that as the talk of Mahisa was going on, through mistake he said that the weighing man was called from Mahisa. In fact he was called from Alina. The muddamal article in sealed packet was also opened in the court and this witness identified the same and signature of the slip which was recovered from the bag. Article no.1 muddamal opium was recovered from accused no.1, the slip was given exhibit-18. Muddamal article no.2 which was also in sealed packet was opened in the court. The slip and signatures were identified. That article no.2 opium was

recovered from accused no.2. Accused no.2 was also identified by this witness and this witness also verified that he was the same person. The slips recovered form accused no.2 is given exhibit-19. The slip recovered from second bag was given exhibit-20. This witness has supported entirely the case of the prosecution. This witness has also identified articles of the accused. In cross examination this witness has denied the suggestion that panchas were available for taking sample from the place of incident. He has admitted that the panchas were summoned from Alina village only. This witness has denied the suggestion that panch witnesses and police patrolling party have not taken each others search. He has admitted that when muddamal is found the superior officers are to be informed. This witness has denied that it was not correct that the accused were not asked as to whether they were likely to be searched in presence of Mamlatdar or Class-I officer. This witness has on his own stated that with him Police Inspector and he was gazetted officer. This witness has stated that this substance could be said to be opium on smelling the same. This witness has stated that as he has also investigated earlier such cases he is aware and capable of telling whether substance is opium or not. This witness has stated that the police personnel who had gone to fetch the FSL officer had gone in a Government vehicle who had informed FSL office from Alina on telephone that FSL officer had to come to the place of offence.

He has admitted that Jabirhusain was the one who had gone for calling FSL and weighing man. He has stated that he is not remembering whether the private vehicle was used or not. He has admitted that FSL officer had reached 19.30 from Kheda. Witness say that FSL officer had verified substance. This witness had stated that on that day whether weighing scale was made of steel or iron can not be said. He says that weighing scale was brought by witness No.4. He says that opium was weighed in presence of panch and police party. This weighing man has a grocery shop at Alina. Weighing units were made of iron. He admits that weighing units below 50 grams are usually made of brass. He denied the suggestion that grocery shop keeper would not have weighing scale below units of 50 grams. He has stated on his own that weighing man also brought weighing units. He denied that weighing man never come to the place of offence. In cross conducted on behalf of accused no. 2, this witness has stated that looking to extract of log book, entries were note made while lodging complaint. He has admitted that at Alina bus stop information was received from his private informant. He has not noted down the information received. He states that he has informed his superiors in respect of information. The information was received at 16.00 hrs. Right after receiving information the panchas were immediately called and they reached within 5 to 10 minutes. He has admitted that preliminary panchnama about receiving information in respect of illicit liquor was not

done. On the spot the panchnama in respect of carrying raid for liquor was not made. He has admitted that panchas had searched police party and police had searched them at Alina bus stop. He admitted that at Alina bus stop the fact of searching of each other has not been noted. However he says that this has been referred to and noted in panchnama and in complaint. He says that it is not required to be noted at the place of raid. He has admitted that before even carrying out search of accused no.1 it was told by him that the substance to be opium. He has stated that the panchnama had been written right then. He has admitted that in panchnama it is not mentioned that they had stopped panchnama as they were waiting for FSL officer or any person to come.

He has admitted that in complaint name of panch is not mentioned but in panchnama name is mentioned. He has stated that as in this case it was required to be told to accused that whether they would like to be searched in presence of gazetted officer or Mamlatdar. He has admitted that it was not given in writing to the accused. He admitted that it was asked to accused and that reply of accused was mentioned in the complaint. He has admitted that the word “Adhikar” ('the right') had not been mentioned in the complaint. However he says that he has categorically asked both the accused whether

they like to have them searched in presence of gazetted officer or Mamlatdar. He has admitted that the word 'right' that is Adhikar was not used. He has said that as panchnama was going on after the completion of search of accused no.1 panchas signatures were taken thereafter. Both the muddamal recovered from both the accused was kept separately. He admitted that the muddamal were recovered from each of the accused. He denied that there is requirement of filing separate complaint against each of the accused as both the accused had been together and therefore filed only one complaint. He says that there was a signature of Inspector on the slip has not been mentioned in the complaint. He says that offence was registered at 21.30 on 10/6/2002. The investigation was made by PSO. After sealing muddamal it was with PI Raolji, Inspector. The muddamal was given to PSO. PSO had issued requisite receipt. He has admitted that muddamal was given to PSO by Raolji at 21.30 hours.

Thus this witness has supported the case of the prosecution and he has given consistent answer in the cross examination. This witness has supported version mentioned in the complaint also, which is at exhibit-17.

14. P.W No.2: He is panch witness. This witness has stated that on 10/6/2002 he was called at

Alina bus stop for acting as panch. He says that along with him another panch was Jayantibhai Hatibhai Talpada. This witness has said that police called him for acting as panch from which police station that he does not know. He also does not know the name of the Police Inspector. This panch had travelled from Nadiad to Alina in S.T. bus as he had alighted from ST bus he was summoned by police to act as panch. This panch witness has stayed at Alina he has not gone anywhere. This witness had stated that he has not gone anywhere with police and nobody was searched before him. This witness was declared hostile and the prosecution has put appropriate question to this witness wherein this witness has repeated that he does not know anything about the raid. However this panch witness identified his signature in the panchnama and said that the panchnama bears his signature. He also identified that the slip taken out from the article bag was also bearing his signature though he has denied that when opium was found from accused at that time his signature was taken on the slip. He has denied the suggestion that the muddamal was recovered from the accused. This panch witness has turned hostile and therefore his testimony has to be considered with utmost care and caution.

15.Panchnama at exhibit-28 appears to have been

consistent with the case of the prosecution. The prosecution witness no.3 is panch no.2 whose testimony is recorded at exhibit-28. This witness is also turned hostile and therefore he was declared hostile witness. This witness has however identified his signature in the panchnama.

16. The P.W. No. 4 is weighing man Gopalbhai Kantilal Shah. This witness has in his examination in chief said that he is having his cold drink shop at Alina village. For weighing Shrikhand he is keeping weighing scale. On 10/6/2002 he was at his shop. The police had come and told him that as some narcotic substance was found and as the same was to be weighed he should go along with weighing scale and weighing units. He had at first told the policeman that his wife had gone out and there was no one in the shop,therefore, it was difficult for him to go with police. Policeman had informed him that as it was evening time and closing hours and no customer would come, it would be better if he would go with the police. He has said that it was around 7.00 clock when he was contacted. He had taken along with him weighing scale and weighing units. He said that he has taken weighing units of 1 kg. to 20 grams. He says that he had gone in a police jeep along with weighing scale. He has stated that he was taken by police in the jeep

through sim of Mahisa canal. He states that he was kept sitting in police jeep and weighed substances there which appeared to be black substance in colour. He has stated that he had 20gram, 50gram, 100 gram, 200gram , 500 gram and 1kg weighing units. He has said that there was another big vehicle of police standing wherein 2 persons were sitting. This witness was declared to be hostile and he was permitted to be cross examined by prosecution.

17. PW-5: Jabirhusein the person who had gone for calling panch witness and weighing man is examined at exhibit-31. This witness has also supported the case of the prosecution in its totality. But only thing deserves to be noted is that he has said that he and the weighing man had traveled in private vehicle for reaching the place. In his cross examination he has denied the suggestion that he had used vehicle called Hero Honda for fetching weighing man who was a trader. He has shown his ignorance as to how the tag containing seals were affixed on muddamal. He has admitted that the bag containing 200 grams of opium was of white cloth. He has stated that bag was sealed with the help of thread. He pleaded ignorance as to how many seals were affixed. He said, that bag was sealed with seal of Inspector. This witness has stated in his cross examination that the complaint was registered

at police station. He has stated that police station Sub Inspector was Shri. Savani. He says that complaint was sent in presence of PI Raolji. This witness states that muddamal was given in his presence to PSO. This witness has stated in his cross examination that the accused were asked whether they were liked to be searched in presence of either gazetted officer or Mamlatdar. He has admitted that he has gone on scooter to fetch the trader. He stated that he went on scooter for calling the trader. He says that when he reached place of offence FSL officer was present. He says that FSL officer had examined material then and there. He has admitted that whether accused would like to be searched in presence of officer or not has not been asked in writing. He has denied the suggestion that he has given false testimony.

18. Prosecution witness No. 6 Shri. Udesinh Raulji is the PI who had accompanied police party and in whose presence articles were recovered. This witness has also supported the case of the prosecution. This witness states that he had asked accused whether he would like to have themselves searched in presence of Executive Magistrate or Class-I officer and both of them had said “NO”. This witness reiterated what is stated in the complaint without much contradictions. He has also

identified his signature on the complaint, and he has also identified accused and muddamal article no. 1,2, 3, and 4. He has also identified his signature on slips and seal affixed on the muddamal. He has also stated that recovery of muddamal was informed to DSP, Kheda. This copy is produced at exhibit-36. The muddamal which was sent to FSL with covering letter is at exhibit-37. Receipt issued by FSL is shown to him. It was the same muddamal, is also stated by this witness. In his cross, this witness has reiterated what he has stated in his examination in chief. He has denied the suggestion that again he had not intimated the accused as to whether they would like to be searched in presence of Class I officer or Mamlatdar. He has also denied suggestion that he had written something without asking. He has stated during patrolling they had gone in one vehicle and that vehicle was tempo traveller. He has admitted that at Raska culvert police party and the panchas had searched each other and for that separate panchnama was prepared. The vehicle was parked around 100 to 150 ft. away from Raska canal culvert. Vehicle can be seen from 100/150ft. away. He has stated that Jabirhusein was sent for fetching weighing man. Jabirhusain went in private vehicle for calling weighing man. He stated first weighing man reached, immediately FSL officer had also reached. He has denied suggestion that muddamal

article was weighed by police. He has denied the suggestion they were required to make entry before going for search. He has admitted that officers are keeping weekly diaries. He has admitted that at Alina no preliminary panchnama was drawn. He has stated that at the place of offence part of the panchnama was drawn and thereafter the panchnama was completed after nabbing accused. Panchnama was written as per dictation of the panchas. He has admitted that Magistrate and Mamlatdar are different designations. He has denied that in panchnama there is no reference to search the accused in presence of Magistrate. He has admitted that, it is true that in panchnama reference is in respect of Mamlatdar only and there is no reference in respect of Magistrate. The witness clarifies that Mamlatdar is also known as Executive Magistrate. He has been aware of requirement of Section 50 of NDPS Act. He has denied suggestion that as per law Executive Magistrate can not be asked to take search. He has admitted that it is true that the accused were not given in writing about the search. The accused have not given in writing that they did not want to have themselves searched in presence of Magistrate or Class-I officer. The arrest was notified to accused and their relations mentioned in the arrest memo. He has admitted that in police station he has handed over muddamal to PSO. He has stated that, it is

also stated that while accepting the muddamal PSO had not affixed seal on the muddamal. He has not inquired or made investigation in the case whether he has taken any statement after handing over muddamal to PSO. This investigation was carried out by PSI Mahuda. He has stated in his cross examination that FIR was sent to concerned court which mentions about muddamal. He says that muddamal was sent to the court at the time of presenting charge sheet. He has admitted that along with muddamal, slip of panch were also placed in loose and it was not affixed on the substance. The seal kept on muddamal was not pasted with any gum. The muddamal bag was wrapped in cloth. He denied the suggestion that mandatory provision of NDPS Act has not been complied with.

19. P.W. No: 7, is PSO Shri. Sivabhai Makanbhai Makwana, who has been examined at exhibit-39. This PSO has stated that on 10/6/2002 while discharging his duty as PSO in Mahuda, the LCB PI Raulji had given him muddamal. Muddamal was given to him at 21.30 hrs on 10/6/2002. Shri. Raolji has given him muddamal panchnama, letters and muddamal opium in sealed packets and forwarding copy of dispatch letters. He has put his signature at exhibit-35 which is in his own hand writing. He had handed over to writer-head the muddamal in two sealed packets.

Muddamal receipt was prepared and it was given to writer head. Offence was registered and investigation was given to PSI Mahuda. Entry in station diary is made. As he was not carrying station diary the case was required to be adjourned again on other day. His cross examination continued and he brought police station diary and in station diary at item no.16 the crime is registered. The notings are in his own hand writing which he has identified in the court. The signature made therein was identified by him. It was in his own signature. True copy of the extract of register is produced at exhibit-44. The FIR was lodged and the original copy was produced. This witness has clearly stated that PSI had given two sealed packets of opium weighing 250 gram and 180 gram each. In his cross examination this witness has denied suggestion that the receipt of muddamal has not been noted in his station diary. He has denied suggestion that station diary was written by his assistant. He stated that PI LCB Kheda had given total 7 articles of muddamal. He says that he has written what was received but he can not say what was in the muddamal. In his cross examination he was confronted in respect of his earlier say of receiving only two packets of muddamal and there was suggestion that he was lying. He has stated that muddamal receipt was not given to PI ACB. But he says that it was given to

witter head and writer head has not given any receipt. He admitted that there was no noting in respect of handing over muddamal to Head Constable. This witness stated in his cross examination that in the office there is safe and valuable materials are stored. He has admitted that muddamal samples were sealed and weight was mentioned in the muddamal. He has stated that his further statement has not been recorded by police. He has denied the suggestion that he is giving false testimony.

20. P.W No.8: PW-8 is Unarmed Police Constable Shri. Bhratkumar Ambalal Brahmbhatt, whose testimony is at exhibit-49. In examination in chief this witness has stated that muddamal opium for taking it to the FSL was given to him on 12/6/2002 at 20.00 hrs in the night. The muddamal he had received was in a sealed pack condition. He has stated that he had received 2 khakhi covers in sealed condition. He has stated that along with sealed covers he had also received letter addressed to FSL. He has stated that on 13/6/2002 in the morning he had started from Mahuda at about 7.00 am and reached FSL at Ahmedabad. The sealed packets and letter were handed over to FSL on 13/6/2002 at about 11.30 a.m. He has stated that he has delivered sealed packets in the same sealed condition in which he had received. He has stated that the packets which he had received

on 12/2/2002 in night were kept in his hand bag(packet), it was kept throughout with him. He was to leave early in the morning on the next day for reaching Ahmedabad at FSL, he had kept the muddamal and letter intact and safely. He has stated that his name was mentioned in the muddamal register by crime writer. He has stated that crime writer ASI Maganbhai Pitabhai handed over him sealed packets and letter. The receipt was issued by FSL that was handed over to police station. Mark 14/2 was shown to him and he says that this was the letter for handing over to FSL which is at exhibit-50. The dispatch note at mark 14/6 was shown to him which bears signature of PSI and P.I. and also of Dy. Police Commissioner which he has identified. In that dispatch note the details of muddamal is mentioned. Those details are correct. This is given exhibit-51. The FSL receipt at mark 14/7 is shown to him which was issued by FSL on delivering muddamal article and cover. That receipt bears signature of Assistant Director of FSL. That was signed by him as carrier of muddamal. That signature he has identified, which is produced at exhibit-52. The receipt was handed over to investigating officer PSI Vaghela. He was shown muddamal cover article no.3 and 4 which is delivered in sealed pack condition to FSL. In his cross examination this witness has said that, he is serving in police department since

last 3 years and at Mahuda police station he had served for about 1 year and 3 months. He has stated that he received covers and letter to be given to FSL from ASI writer head Maganbhai Pitabai. He has admitted that from 12/6/2002 to 13/2/2002 at 7.00 clock muddamal was with him and it was kept in his residential quarter which is adjacent to police station. The quarter is 20 ft. away form police station. He has admitted that he had not received any written order permitting him to keep muddamal at his residence. He has stated that hand bag was kept along with his side while he slept. He has denied the suggestion that muddmal was likely to be tampered with as he has taken it to his residence during night. He has stated on his own that muddamal article were kept in sealed packet as it was delivered in same condition to the FSL and there was no chance of tampering. He has stated that he has traveled by ST Corporation bus to reach Ahmadabad for delivering muddamal to FSL. He has stated that earlier also he had gone to deliver muddamal. He had received muddamal only in the evening. He has denied the suggestion that he has given false testimony according to the instruction of his superior.

21. P.W. No.9: Maganbhai Pithabahi Bagora, whose testimony is recorded at exhibit-53. This witness has stated that the muddamal was

received by him on 10/6/2002 between 10 to 11 hrs in the night . He has stated that this muddamal he had received from PSO Sivabhai Maganbhai at entry no. 79. Total 7 items were received from PSO that is registered in the muddamal. Entry no. 79 is made by Assistant Police Constable in his own hand writing. He says that it was entered under his supervision. The extract of register is at exhibit-54. He says that muddamal was kept in safe and keys were in his custody. He says that 20 / 20 grams samples of muddamal were handed over to witness no.8 constable for delivering to the FSL. He says that muddamal was given to constable on 12/6/2002 at about 11.00 clock. He says that receipt for letter received by FSL was given by Bharatbhai, P.W-8. The muddamal was sent to the court under signature of PSI on 7/10/2002. He has stated that muddamal was received in sealed pack condition. He says that same muddamal in sealed pack cover was handed over for delivering to FSL. He identified those cover. He was shown muddamal currency notes of Rs.10600=00 which he had received from PSI. He had also identified sling bag and dothi. In cross examination this witness has stated that the colour of the cover is not mentioned in entry no.79. But he has stated in his cross examination that muddamal cover was in sealed pack condition. He has stated that he has not counted total seals affixed on muddamal.

However he states that on muddamal container/pack seal was in English. He has admitted that it is true that muddamal was given to Baratbhai, witness no.8. He has not noted same in register. He has admitted that entry no. 79 is not in his handwriting but it is in the handwriting of his assistant. He has admitted that entry no. 79 was made in his presence. He has stated that it is true that his brother's statement was not recorded by investigating officer. He has denied the suggestion that on 12/10/2002 he had not given muddamal to Bharatbhai, PW-8.

22. PW-10 Mehboobkhan Miyakhan Pathan, exhibit-60, served as AHC in Mahuda police station on 10/6/02. His duty was to assist the account writer constable. He states that he had written down in the register receipt of muddamal. Muddamal receipt was prepared at Mahuda police station. Extract of muddamal register was shown to him, it was bearing signature of PSO Shivabhai, same was given exhibit-61. He says that from receipt of muddamal he has entered the same into register which is at exhibit-79, this extract is produced at exhibit-62. He states that the muddamal was handed over to Bharatbhai witness no.8 and his signature is identified by him. It was made in presence of PSI Mahudha whose signature is also identified by him. He has stated that muddamal was

registered on 3/7/2002 and he says that when he made entry muddamal no.3 and 4 were with him Muddamal no.3 and 4 were handed by PSI for examination to FSL. Remaining muddamal was thereafter sent to court on 7/10/2002. This witness in his cross examination has stated that from 3/7/2002 he had assumed duty at Mahudi police station and before 3/7/2002 he has not done any duty at Mahudi police station. He has also admitted that before 3/7/2002 he had not done duty at Mahudi police station. Muddamal note was made on 3/7/2002 the receipt entry was made in register on the basis of muddamal receipt. He has admitted that muddamal receipt at exhibit-61 had been written in his own hand writing. He has stated that except muddamal 3 and 4 other mudamal were sent to court with sealed bag on 7/10/2002. The entry for sending muddamal to court on 7/10/2002 is in his own hand writing.

23. PW No.11: Bachuji Bhawanji Waghela, PSI Mahudi police station who, is examined at exhibit-63. He has stated in his testimony that in June 2002 he was working at Mahudi police station as PSI. At Mahudi police station Shri. Savani, ACB P.I. Kheda informed case of illegal opium of 470 grams. The papers and muddamal article etc were forwarded to Mahuda police station PSO along with letter for registering offence of crime. PSO Shivabhai had registered

that crime. He has stated that when PSI Savani handed over papers to police station he was present. This papers and muddamal were handed over to PSO Mahudi by Savani. He says that he was ordered to make investigation in this matter and therefore he had started investigation. He has stated that Shri. Savani, witness no.1 had given muddamal in sealed packets. He has stated that he had verified that the packets were in sealed condition. He says that on 11/6/2002 he had inquired with the accused in respect of this offence. He says that at exhibit-17 complaint he had made inquiries with the accused. He has written exhibit-17 complaint. He states that as other witnesses of this investigation were at LCB Office, Kheda from Mahuda he had gone to Kheda and made inquiry. He says that witness have given statement corroborating the complaint. As the accused were not cooperating and giving satisfactory answer remand report was prepared. Remand was granted up to 15/6/2002 at 2.00 clock and the accused were interrogated. FSL form was filled in and given to unarmed police constable Bharatbhai (PW-8). In cross examination this witness has stated that the muddamal was kept in safe custody with due care and caution. He says that in case dairy first entry in respect of this offence was made 21.30 hours. He says that this muddamal was given to write head. He says that

he would not remember as to how many packets and muddamal were there. However he states that so far as his memory goes it was in three packets. He has said that on 11/6/2002 muddamal was given to police constable (PW-8).

24. P.W No.12: Karansinh Nathusinh Vaghela, whose deposition is recorded at exhibit-66. He states that he was working as PSI on 21/7/2002 and he thereafter taken over investigation in this case. He had received certificates from FSL which are exhibit 67 to 69. He had filed chargesheet on 21/7/2002. As there was sufficient evidence against the accused. There is no much cross examination.

25. It appears from the record that the accused no.2 thorough his advocate applied to the court under section 311 of Cr.P.C. For examining the officer of FSL, who had accepted the muddamal and who had examined muddamal that is exhibit-75. The trial court at the relevant time, as no ground was made, rejected the same vide order dated 5/5/2004.

26. The accused statement was taken under section 313 of Cr.P.C. Wherein they have denied case of the prosecution. The accused did not examine any witness in their defence and no evidence is produced on behalf of the accused. The trial court has analyzed the evidence on record and

examined rival contentions and submissions of the parties and come to the conclusion that the prosecution had proved its case beyond doubt and therefore convicted the accused for commission of offence punishable under section 18 of the NDPS Act vide order dated 17/3/2006. The trial court has also inflicted punishment as stated above upon the accused.

27. The impugned judgment is sought to be assailed on the ground that the prosecution has not established its case beyond doubt. It is submitted that though the raiding party had information in respect of illegal transfer of illicit liquor, no liquor case had been made out by the raiding party. This in itself would go to show that the case of the prosecution is not believable. This submission deserves to be rejected, as it has come out very clearly in the testimony of prosecution witnesses that though witness no.1 received secret information in respect of transfer of illicit liquor and though the party had in fact proceeded at the place of offence under the impression that they were to watch and prevent transfer of illicit liquor, when they accosted the accused; they have been informed by accused no.1 that he was carrying opium, then the procedure was followed. Thus that point onwards the mandatory provisions have been followed and therefore it can not be said that as no liquor case was made

out the case of the prosecution is unbelievable on that count.

28. The summoning of panchas from village Alina has been assailed so as to raise doubt about the version of the prosecution. This also can not be accepted in view of the fact that as the information in respect of likely transfer of illicit liquor was received by the prosecution witness no.1 at village Alina, it was very natural on his part to summon witnesses there and then itself. The submission of the counsels for the appellants that the panchas were chosen those who can support the case is also not correct as the panchas have not supported the case of the prosecution and they were required to be declared hostile. The summoning of panchas from village Alina therefore can not be said to be unnatural and improbable rendering the case of the prosecution unbelievable.

29. Learned counsels for the appellants have attempted to assail the case of the prosecution and the impugned judgment on account of prosecution's failure in proving due compliance with mandatory provision of Section 50 of the Act. The testimony of the prosecution witness no.1 and prosecution witness no.6 go to show that the moment it was disclosed by the accused no.1 that he was carrying opium, the witnesses and searching party members followed the

procedures required to be followed under the NDPS Act. The accused were asked before carrying out search upon their person as to whether they would likely to be searched in presence of Gazetted Officer and / or Magistrate or Mamlatdar. It deserves to be noticed that so far as the accused no.1 is concerned the opium was found from his bag which was hanged on his shoulder. The Apex Court in case of STATE OF HMACHAL PRADESH VS. PAVAN KUMAR, reported in AIR 2005 S.C. pg. 2265 has observed that the requirement of Section 50 of searching the person of the accused suspect in presence of Gazetted Officer or Magistrate is not to be carried further so as to make it mandatory while searching the luggage of the suspect. In the instant case the opium was found from the sling bag of the accused no.1 and therefore, in this case so far as accused no.1 is concerned, it would not be open to the appellants to urge that Section 50 had not been complied with. Apart from this, the testimony of prosecution witness no.1 and 6 go to show that even in case of accused no.1 also he was asked whether he would be likely to be searched in person of officer named in Section 50 of the Act. The minor discrepancy with regard to designation would not render the prosecution case invalid and or insufficient. In fact the Apex Court has time and again observed that there is no straight jacket form or formula

prescribed by the statute for observing due compliance with provision of Section 50 of the NDPS Act. In case of STATE OF RAJASTHAN V. RAM CHANDRA, reported in AIR 2005 S.C. pg. 2221, Apex Court has observed that, there is no specific form prescribed or intended for conveying the information required to be given under Section 50 of the NDPS Act. What is necessary is that the accused (suspect) should be made aware of the existence of his right to be searched in presence of one of the officers named in the section itself. As no specific mode or manner is prescribed or intended the Court has to see the substance and not form of intimation whether the requirement of Section 50 have been met is a question which is to be decided on the facts of each case. In fact on earlier occasion also in case of PRABHA SHANKAR DUBEY V. STATE OF MADHYA PRADESH, reported in AIR 2004 S.C. pg. 486, the Apex Court has observed that in absence of any straight jacket formula for indicating the accused about his right to be searched in presence of officers named in section 50 of the Act, the Court has to see whether in substance the accused did have information. In view of this observations of the Apex Court, the Court is to see whether the accused did have information as to their right for subjecting themselves to be searched in presence of officers named in Section 50 of the Act. The testimony P.W. No. 1 and 6 which

have not been faltered during their cross examination go to show that the compliance of Section 50 of the Act was observed and on this count the case of the prosecution can not be assailed.

30. Learned counsels for the appellants have contended that, contradictions in the testimony of prosecution witnesses, especially witness No. 1, 5 and panch witness no.4 go to show that the prosecution has not proved its case beyond doubt. This contention of the counsels of the appellants deserves to be rejected as having no merits. The minor contradictions in respect of the testimony of the prosecution witnesses can not be said to be vitiating the entire case of the prosecution. The contradiction is said to be relied upon in respect of the mode of transport used by the policeman who had gone to fetch P.W-4 who weighed the substance. At one place P.W. no.5 had said that he had used private vehicle for fetching P.W-4 and PW-4 himself has said that he had gone to the place of offence in a Government jeep. It deserves to be bear in mind that there is time lag between the incident and witnesses statements before the court. The discrepancy in narrating mode of transport in itself can not be said to be so grave as to discard the entire case of the prosecution. As against this, the testimony of witness no.4 deserve to be viewed wherein it

has come out very clearly that he was requested to go to the place of offence for weighing the contraband substance. He was requested to accompany PW-5 from his shop cum residence. Initially he was reluctant to go but at the request of witness no.5 he had shown willingness and had gone to the place of offence. He has also stated that in place of offence two persons were sitting in police van. He had weighed substance black in colour. This witness has been declared hostile. However testimony of the hostile witnesses need not necessarily be discarded. The Apex Court has in case of SAT PAUL Vs. DELHI ADMINISRATION, reported in AIR 1976 SC pg. 294 observed that even in a criminal prosecution when a witness is cross examined and contradicted with the leave of the court by the party calling him, his evidence can not, as a matter of law, be treated as washed off the record altogether. It is for the Judge to consider in each case whether the witness stands thoroughly discredited or can still be believed in regard to part of his testimony. In the instant case the testimony of PW-4 so far as his visit to the place of offence, seeing two men sitting in the van, weighing the opium at the place of offence; deserve due consideration and can not be discarded entirely. This witness no.4 has also stated that he had carried the requisite measuring units from 20 grams to 1 kg. Thus

this witness's testimony to this effect had supported the case of the prosecution.

31. The counsels for the appellants have assailed the case of the prosecution of the judgment impugned on the ground that the prosecution had failed in proving the case beyond doubt that the muddamal opium and the opium which was sent for examination to FSL was intact and in sealed condition and its possibility of any tampering. In order to make good this submission this Court's attention was drawn to testimony of PW-8, the constable who was entrusted the muddamal packets for delivering it to FSL. PW-8 has in his testimony said that he received the muddamal packets to be delivered to FSL on 12/6/2002 at 20.00 in the night. The muddamal he received was in sealed pack condition. He has further stated that he proceeded for delivering the packets at FSL, Ahmedabad on 13/6/2002 in the morning itself and delivered the muddamal in a safe sealed condition to the official of FSL. PW-9 that is the person who had handed over muddamal to PW-8 has stated that he had delivered muddamal to PW-8 on 12/6/2002 at 11.00 clock in the morning. Thus the contradictions in testimony of these two witnesses have been highlighted for assailing the case of the prosecution. This court is not impressed by this submission. As it is stated herein above the time lag from the date of

incident and the trial deserves to be borne in mind and what is important to be noted is whether it has come out in the testimony of the witnesses that the muddamal was delivered and accepted in sealed pack condition or not. The testimony and record clearly show that the muddamal was handled in a sealed pack condition by this witness and therefore the counsels submissions with the regard to possibility of it being tampered can not be accepted. It deserves to be noted that the receipt issued by FSL also clearly indicate that the FSL had received the muddamal in safe custody. The appellants counsels have also highlighted the fact that PW-8 has stated that the entire night muddamal was kept at his residential quarter and therefore this was sufficient to create doubt about the same being preserved properly. This submission is also bereft of any merits. It is to be noted that the muddamal was to be brought from Mahuda to Ahmedabad. For that witness no.8 was to travel early in the morning so that he could reach the FSL before noon. The muddamal was therefore naturally be given to him in the night itself. The residential quarter allotted to him was only 20 feet away and adjacent to the police station. This witness has steadfastly stated that he had taken care to see to it that the muddamal is kept safely with him till it is delivered to FSL and he has not faltered during his cross

examination. This can be treated as sufficient proof, ruling out any possibility of tampering with the muddamal.

32. The counsels for the appellants have contended that 20 gram of opium was said to have been collected from each of the quantity of opium recovered from the appellants. Whereas in the report of FSL the weight of the sample is shown to be 21.97 grams and 22.90 grams each. On this difference in weighment it is contended that the serious discrepancy raises about the very muddamal in question. It is contended that possibility of it being tampered with can not be ruled out. This submission of the appellant is also bereft of any merits and therefore same deserves to be rejected. It deserved to be noted that the difference in quantity is absolutely marginal and it deserves also to be noted that the prosecution witness no.4 who had weighed the muddamal did not carry with him the precision weighing scale which were available in the FSL. Therefore this marginal difference in the quantity of muddamal can not be said to have dealt a blow to the case of the prosecution. The Apex Court has in cases of MADAN LAL AND ANOTHER V. STATE OF HIMACHAL PRADESH, reported in AIR 2003 S.C. pg. 3642 observed that when the seals were noticed to be intact and there was no tampering, almost ignorable variation in weight was not

sufficient to raise doubt about the case of the prosecution. As it is stated herein above the slight variation on a higher side in muddamal in itself can not be said to have dealt major blow to the case of the prosecution.

33. The counsels for the appellants have also assailed the decision of conviction on the ground that there was serious discrepancy in discretion of narration of seal. In the testimony of witness no. 9 he has said that contents of seal was in English whereas exhibit-68 FSL report indicate that the seal was in Gujarati. This can not be said to be a major discrepancy capable of dealing serious blow to the case of the prosecution.

34. It is important to note that the recovery of contraband article opium was actually a chance recovery. It has come out clearly in the testimony of PW no.1 and 6 that PW-1 had received secret information in respect of some illegal transfer going to take place of illicit liquor only. Of course when the accused no.1 informed the raiding party that he was carrying opium, from that point onwards it can not be said to be chance recovery or chance search. The prosecution was required to prove due compliance with mandatory provision of NDPS Act. The testimony of PW-1 and 6 go to show that section 50 was complied with. The accused

were informed whether they would be likely to be searched in presence of officers mentioned in section 50 of the Act. Mere non-use of word “right” in itself would not vitiate entire case of the prosecution. As it is stated herein above the compliance of Section 50 is to be ascertained from facts on record and if the Court comes to the conclusion that there is substantial compliance with Section 50 of the Act then mere omission in using work 'Right' [Adhikar] would not render it to be invalid and or non compliance. The prosecution has proved that the opium was in fact recovered form the accused no.1 and 2 which is contraband article. The panch witnesses turning hostile in itself would not reder the entire case of the prosecution vitiated. In fact the Apex Court time and again has observed that the panchas have tendency to turn hostile. However the case of the prosecution if otherwise capable of being proved from the testimony of other witnesses, even if they are members of the raiding party, it can not be said to be serious infirmity so as to upset the order of conviction. In the instant case the prosecution witness no.1, and 6 who have no animosity whatsoever with the accused have flawlessly given the entire version and they have not shaken during the entire cross examination. The factom of recovery of opium is proved from testimony of accused no.1 and 2 and therefore,

it can not be said that the conviction and sentence passed by the trial court is erroneous and therefore same does not call for any interference in the present appeals.

35. This Court is also unable to accept the alternative submission of learned counsels of the appellants for reduction in penalty looking to the gravity of the offence and the punishment imposed. The punishment imposed is absolutely just and proper and therefore the order of punishment also does not call for any interference under the NDPS Act.

36. In the result this Court is of the considered view that the order in judgment impugned in these appeals does not call for any interference and the same is required to be confirmed. Accordingly it is hereby confirmed. The appeals therefore fail and they are deserved to be dismissed and accordingly they are dismissed.

[S.R. BRAHMBHATT, J]

/vgn